

Federal Communications Commission

DA 99-2687

DEC 7 2 21 PM '99

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-194
Table of Allotments,)	RM-9360
FM Broadcast Stations.)	
(Jewett and Windham, New York))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 24, 1999

Released: December 3, 1999

By the Chief, Allocations Branch:

1. At the request of Ridgefield Broadcasting Corporation ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 22212 (1998), proposing the reallocation of Channel 250A from Jewett, New York, to Windham, New York, as the community's first local aural service, and the modification of its construction permit for Station WAXK to specify Windham as its community of license. Petitioner filed comments reiterating its intention to apply for the channel, if reallocated. No other comments were received.

2. As stated in the Notice, petitioner seeks the reallocation of its station to Windham pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Windham is incorporated and listed in the 1990 U.S. Census and attributed with a population of 1,682 persons. Windham has its own local government, its own police, fire and ambulance services, town hall, library and other community attributes. While the reallocation would result in the removal of the only potential local service at Jewett, a community of 933 people, petitioner states that no population would lose existing service because Station WAXK is an unbuilt facility. Further, since the petitioner seeks the allotment at the transmitter site set forth in its construction permit, it states that the residents of Jewett will not lose any potential reception service.

3. We believe the public interest would be served by reallocating Channel 250A from Jewett to Windham since it could provide the larger community with its first local aural service. We recognize that this reallocation would leave Jewett without any local aural service. However, while we carefully examine a proposal which would result in the loss of a community's only local aural service, we believe that the removal of an unbuilt station, such as Station WAXK, does not raise the same concerns since it does not represent a service which anyone has come to rely upon. See, Chatom and Grove Hill, Alabama, 12 FCC Rcd 7664 (1997), and cases cited therein. Further, the reallocation will not result in the relocation of a station from a rural to an urban area since Windham is not located within any Urbanized Area and the station will not provide service to such an area.

4. Channel 250A can be allotted to Windham in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.3 miles) northwest to

accommodate petitioner's desired transmitter site.¹ Even though Windham is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence in the reallocation by the Canadian Government is not required since only the community of license is being changed. However, the Canadian Government will be notified of the change in community of license upon the filing of the application to implement the new allotment.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 18, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Jewett, New York	--
Windham, New York	250A

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Ridgefield Broadcasting Corporation for Station WAXK, Channel 250A, IS MODIFIED to specify Windham, New York, in lieu of Jewett, New York, as its community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Ridgefield Broadcasting Corporation, permittee of Station WAXK, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

¹ The coordinates for Channel 250A at Windham are 42-20-12 North Latitude and 74-16-19 West Longitude.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau